

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA :
: 10-MJ-189
:
v. : March 3, 2010
: Brooklyn, New York
JAMES MALPESO, :
:
Defendant. :
:
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR ARRAIGNMENT AND BAIL
BEFORE THE HONORABLE VIKTOR V. POHORELSKY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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Proceedings recorded by electronic sound recording,
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1 (Proceedings began at 12:00 p.m.)

2 THE CLERK: Criminal Cause for Arraignment, Case
3 Number 10-189-M, United States v. James Malpeso.

4 Counsel, please state your name for the record.

5 MS. ARGENTIERI: Nicole Argentieri. Good afternoon,
6 Your Honor.

7 MR. ROMANO: Good afternoon, Your Honor. Vincent
8 Romano for Mr. Malpeso.

9 THE COURT: Good morning. Mr. Malpeso, the purpose
10 of the proceeding today is to insure that you understand the
11 charge that you face here. I'll advise you of certain rights
12 you have as a defendant in a criminal case and we will address
13 whether bail can be set.

14 Mr. Romano, did you see a copy of the complaint?

15 MR. ROMANO: I have.

16 THE COURT: Did you review that with Mr. Malpeso?

17 MR. ROMANO: Yes.

18 THE COURT: Are you satisfied that he understands the
19 charge?

20 MR. ROMANO: Yes, Your Honor.

21 THE COURT: Mr. Malpeso, you're charged with using
22 extortionate means to collect a debt. Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: You have the right to remain silent.

25 That means that you need not make any statement about the

1 charge to anyone. Any statement you make, except for
2 statements you make to your attorney, can be used against you.

3 You have the right to have an attorney represent you
4 in all proceedings. If you cannot afford an attorney, the
5 court will appoint an attorney at the court's expense to
6 represent you.

7 I have a notice of appearance by Mr. Romano but it
8 is for arraignment purposes only. Does that continue to be
9 the case, Mr. Romano?

10 MR. ROMANO: For the moment, yes.

11 THE COURT: I'm reluctant to accept a notice that's
12 limited just to that but what -- in other words, we need to
13 have somebody that can remain in contact [inaudible] the court
14 and the defendant. So until someone else is substituted in or
15 until Mr. Malpeso makes an application for court appointed
16 counsel the court will be looking to you to maintain contact
17 between the defendant and the court.

18 MR. ROMANO: I'll maintain the continuity, Your
19 Honor.

20 THE COURT: All right.

21 MR. ROMANO: I have no problem with that.

22 THE COURT: All right. What's the Government's
23 position with respect to bail?

24 MS. ARGENTIERI: Judge, it's the Government's
25 position that this is not a bailable defendant. First of all,

1 looking at the nature and circumstances of this offense and
2 both the history and characteristics of this defendant.

3 The defendant is charged with extortion, Judge, but
4 this is no small extortion. The defendant threatened a
5 confidential source over a significant period of time, threats
6 that were captured through consensual recordings, video
7 surveillance and also surveilled by the FBI. He threatened to
8 kill him. He put a gun to him which I'll get into in a
9 second, and he used that firearm in furtherance of the
10 extortion which makes this case, Judge, a presumption case,
11 meaning that he's presumed to be both a danger to the
12 community and a risk of flight unless he can rebut that
13 presumption and show that there are conditions of -- bond
14 conditions that can address those concerns.

15 I've spoken with defense counsel. The bond package
16 he presented to me which is the defendant and his wife and
17 their marital home is insufficient for several reasons. But
18 first I'd just like to go through what the exact circumstances
19 of this offense is, Judge, which I think you got a flavor from
20 from reading the complaint.

21 This defendant is an associate of the Bonanno
22 family. He's an enforcer for the Bonanno family and he's a
23 loan shark. How do we know that? We know that through
24 information provided by confidential sources, by cooperating
25 witnesses, and by the defendant's own statements. He's caught

1 here on tape saying "You borrowed money from gangsters."
2 These are not regular people. They're gangsters. We know his
3 nickname with the Bonanno family captain who he's on record
4 with, Anthony Sclafani, who sits with the rest of his crew in
5 the MDC as a result of an arrest on loan sharking charges in
6 October. Called this defendant one of his twin towers, one of
7 the guys that he sent out to get things done. The other twin
8 tower was in the MDC and has since been released but he is
9 another big guy who was sent out to enforce for the Bonanno
10 family.

11 Now, on tape he talks about the fact that they sent
12 me, they aren't regular guys, they're gangsters, they want to
13 leave you dead in the street. He also talks about the fact
14 that he's a loan shark. If you listen to the tapes, Judge,
15 which I brought today and which I'm prepared to play brief
16 snippets of the recordings so you can just get the flavor of
17 how violent this man is and the violence that he was willing
18 to do to an innocent person on the street in the middle of
19 broad daylight literally. Sitting outside a pizzeria in his
20 car, Judge, is where this occurred.

21 He talks about his earn. He says to the
22 confidential source --

23 THE COURT: I'm sorry, his?

24 MS. ARGENTIERI: His earn which is how organized
25 crime defendants talk about how they make money. His earn is

1 to put money people out on the street. He says "These guys
2 won't give me any more money because you won't pay me and I'm
3 not paying them." Okay. So in his own words he's a loan
4 shark.

5 When he's arrested, Judge, what does he have with
6 him in the car? These are the tools of his trade, Judge.
7 This knife, a pipe with a makeshift handle so it doesn't slip.
8 I think the evidence is quite clear of who he is and what he
9 does.

10 Turning to the circumstances of the offense, for the
11 last five years this confidential source has paid over
12 \$400,000.00 to this defendant, and where did he end up. Where
13 did he end up, Judge? On February 15th he ended up in a car
14 with this defendant. You can hear on the tape the defendant
15 says "Get in the car, get in the car." He says to the guy
16 "Are you scared?" The guy said "Yes, I'm scared." He tells
17 him on the tape "You owe me \$115,000.00." Leading up to that
18 meeting taped conversation, "What do I got to do? Hit you
19 with a shovel to make you understand what's going on. Is that
20 what I have to do, mash you in the face with a shovel so you
21 really understand the concept of this?"

22 During the consensually recorded meeting which is
23 also video recorded you can see on the video the gun that he
24 takes out of the console of his car and put to the chest and
25 leg of the confidential source during the meeting. What does

1 he say when he's doing that? "I'm going to take the cannon I
2 have in this and I'm going to put a hole in you somewhere.
3 Okay. Just so we're sure. I'm going to take this and put a
4 fucking hole in you somewhere." "But why are you going to do
5 that for, for what reason?" "Because I'm fed up with your
6 bullshit." He goes on "I'm going to put a hole in you
7 somewhere, either here or at your house. That's a fucking
8 promise. They told me if I don't react they're going to
9 react. So here's what's going to happen. Either I'm going to
10 put a hole with this fucking cannon in you somewhere or you
11 come up with the fucking money." "I'm going to come up with
12 the money." The defendant says "I'm fed up calling you,
13 threatening you, calling your wife." The CS says look "I'll
14 start calling you back." He says "I don't give a fuck about
15 the phone. I want the money. What do you want me to tell
16 them?" "Tell them I'm going to get cash. I'm going to work
17 for it." The meeting is over an hour.

18 When he's talking about the cannon, Judge, he's
19 taking the gun and he's pointing it to the source's chest and
20 to his knee. He says "When are you going to get the money
21 before I plug a hole in you right now. I'll fucking blow out
22 your kneecap right now and kick you out of the car. Sal, if
23 you didn't owe this much money I would have fucking clipped
24 you already." He says on the tape he would have killed him if
25 he didn't owe so much money, and what's the most important

1 thing for this defendant; his earn. He wants his money.

2 He says at the end "Now, I'm going to turn these
3 guys on him. He's going to be dead. They're never going to
4 find his body and the police are going to come to me and Im
5 going to say I don't know what they're talking about." He
6 says "I'll fucking kill him" talking about the CS. "I don't
7 care. I'll go to jail. That's my business and I don't care.
8 I'll shoot him and leave him dead in the street and I don't
9 give a fuck. They'll never trace it back to me. They can
10 come at me all they want. I'll never give anyone up and
11 they'll be guys behind me left and right coming after him if
12 he's not dead."

13 THE COURT: Where is that conversation occurring?

14 MS. ARGENTIERI: That's in the car, Judge, which --

15 THE COURT: This is --

16 MS. ARGENTIERI: Yes.

17 THE COURT: -- a discussion with your source about
18 someone else.

19 MS. ARGENTIERI: With the source -- no, about the
20 source. What happened is, Judge, the source blamed a loan
21 shark debt on a friend of his to sort of diffuse the blame.
22 So during the conversation in the car they called the friend
23 on speaker phone and now Mr. Malpeso is trying to extort the
24 friend to pay the debt as well. So he's talking to the friend
25 on the phone, and I can play it for you, Judge, if you think

1 it will make it clearer. He says --

2 THE COURT: I understand the context.

3 MS. ARGENTIERI: He's talking about the confidential
4 source.

5 So this is not some kind of bare bone loan sharking
6 case. It's not a case where it's a he said/she said. It's
7 all on tape. It's on videotape, consensual recordings, and
8 it's backed up by frankly the evidence we found in his car.
9 Those are the tools of a loan shark.

10 Now, it's our position that there's no way he can
11 rebut the presumption that he has to in this case. There's no
12 bail package that can neutralized the threat, not home
13 detention and not home detention with a bracelet. That's for
14 several reasons, Judge.

15 The Second Circuit has a body of case law regarding
16 organized crime defendants, organized crime cases. The
17 problem is because of the network that exists for these people
18 all they have to do is make a phone call, Judge, and they can
19 someone at their disposal and that's exactly what the
20 defendant said he was going to do. Even if I get locked up
21 there's going to be someone right behind me.

22 The other -- my other concern, Judge, is that his
23 wife is not an innocent party to this either. She profited
24 from it. The CS was paying \$6,500.00 a month and \$750.00 a
25 week on a regular basis to this defendant. They live in a

1 nice house. I know he's going to talk about the settlement
2 that he got and that's how they paid for his house and he got
3 some settlement two years ago but this is also contributing to
4 their lifestyle. The defendant himself puts his wife in it
5 saying on the phone to the cooperating witness, My wife and I
6 are brawling over the past week over this because the CS is
7 not paying the money. She wants to go to your house and
8 fucking beat your wife up for putting me through this. Okay.

9 So not only is she aware of the extortion, she's
10 annoyed that her family is not getting the money that she's
11 entitled to which frankly makes her an inappropriate surety in
12 this case. It's my understanding she's the only other person
13 of all the people that he knows willing to come to court to
14 sign for him today. So his bond package is willfully,
15 willfully inadequate, Judge, and that's our position.

16 THE COURT: Mr. Romano.

17 MR. ROMANO: Yes, Judge. Thank you.

18 Judge, just to start with the bail package and I'll
19 finish it off as well. The prosecutor mentioned and we showed
20 documents that show the deed, the mortgage statement and the
21 appraisal. Showed them to Ms. Argentieri. She interviewed
22 the wife who's in court who's the suretor who brought all
23 those documents. The house is \$899,000.00. It has a mortgage
24 of \$396,000.00. Rough math we're proposing a \$500 million
25 home.

1 THE COURT: \$500,000.00 I think.

2 MR. ROMANO: \$500,000.00.

3 THE COURT: You said \$500 million.

4 MR. ROMANO: \$500,000.00 which is the equity, I'm
5 sorry, in the house. So that's our initial proposal, Judge.
6 The house is co-owned by Mr. Malpeso. It's owned by the wife
7 Ruth who's in court as well. So we prepare -- if the court
8 approves our package after argument to put it up, sign the
9 confession of judgment and file it, and we also brought Mr.
10 Malpeso's passport. We're prepared to surrender that as well.
11 Travel restrictions and any other conditions the court deems
12 appropriate.

13 I would note, Judge, that I had an opportunity to
14 review the Pretrial Services Report and they do recommend bail
15 despite all the -- the very articulate bail application by the
16 Government. They do recommend that bail be set.

17 I'd like to point out, Judge, I had an opportunity
18 to read the complaint and from the complaint, Judge, you'll
19 notice -- it's actually in the first paragraph. You'll see
20 the conduct, according to the paragraph, ended on February 26,
21 2009. So of all the dangerousness situations that have
22 occurred here they've allowed this defendant to remain in the
23 community for almost a full year, for a full twelve months,
24 and now fast forward to 2010 they want to tell this court how
25 dangerous he is.

1 MS. ARGENTIERI: If I may, that's just a typo.

2 THE COURT: Wait a minute. Let Mr. Romano finish and
3 you'll get your chance to rebut.

4 MS. ARGENTIERI: Okay.

5 MR. ROMANO: Thank you, Judge.

6 They allowed this defendant, although the conduct
7 according to the sworn complaint by the FBI and apparently all
8 of a sudden now after it's been reviewed by let's say give
9 government officials it's now a typo but -- and I'm the only
10 one who apparently saw this. But according to the complaint
11 it ends in 2009 and that means this defendant was allowed to
12 remain free even though he's this very dangerous character
13 and --

14 THE COURT: I really think you're wasting your time
15 here. Sorry. Because I think the rest of the complaint makes
16 it pretty clear that there were consensual recordings as
17 recently as February 15th of this year. So I don't -- that's
18 not going to get you anywhere.

19 MR. ROMANO: As far as background and history and
20 characteristics, this defendant has lived in the Eastern
21 District his entire life. He's lived part of his life in
22 Brooklyn. He's resided in Staten Island for the last eleven
23 years. He's married. He has three children. He has a
24 daughter who is seven years old. He has twin sons who are
25 two-and-a-half years old. The wife Ruth is here is a

1 housewife. Mr. Malpeso was a carpenter by trade. He was
2 severely injured in a work related accident and fell off a
3 ladder. As a result of that he received two back surgeries.
4 He has disks removed from his back because he was in severe
5 pain. He's had left knee operations. He has to go for a
6 third one. He requires a knee replacement. He's on
7 medication.

8 He has, according to the agents who took him to the
9 hospital yesterday, he has severe high blood pressure. His
10 blood pressure was 180/120 and it was dangerously high in
11 addition to -- he takes medication regularly for pain which is
12 prescribed by his doctor.

13 Judge, the vehicle was searched pursuant to a search
14 warrant. Ms. Argentieri has displayed two different items but
15 conspicuous in its absence is there is no gun and that
16 would -- I'm sure she would love to actually display a gun or
17 a picture of a gun in court and say look, this is what we
18 found in the car, just what we were looking for. As you know,
19 Judge, according to the Government's rendition of the facts,
20 the items she displayed weren't used in any commission of a
21 crime.

22 Now, assuming for argument sake -- there is no real
23 evidence that a) it was a real gun, that it wasn't a toy gun,
24 it wasn't a BB gun which wouldn't be defined under the
25 category of a firearm. If the gun was operable, whether there

1 was ammunition in the gun. So there's a lot of different
2 factual scenarios as far as the weapon is concerned that
3 doesn't lead -- it shouldn't lead to the court to believe
4 well, he had a gun, it was loaded and he was ready to use it.
5 Simply there is no evidence.

6 What was interesting, Judge, and according to the
7 complaint the meeting with the CS and Mr. Malpeso in the
8 vehicle took place for 90 minutes. Now, as you know, Judge,
9 it just can't speak of a person who's going to come to court
10 and say I was so fearful, I was so afraid and he remains in a
11 car for 90 minutes and according to the complaint the FBI was
12 nearby either videotaping, audiotaping or both.

13 Now, logically speaking, Judge, if a gun is
14 displayed and they feel their CS at any point in time is in
15 need or in danger do you think they would continue videotaping
16 and say I hope we get a good angle on this, I hope we get it
17 on tape if it really happens, or do you think maybe they would
18 spring into action and intercede and stop what they perceive
19 as a dangerous situation. I respectfully submit, Judge, they
20 didn't perceive the situation to be dangerous or as dangerous
21 as portrayed by the Government. Otherwise they wouldn't allow
22 it -- the situation to proliferate for a full 90 minutes in a
23 vehicle.

24 Judge, according to the defense this colorful
25 language, these threats are built into the offense already.

1 That's why we're in front of the court is because they like
2 these fact patterns and you need this colorful language
3 because that's what really drives the statutes here. When a
4 CS goes to the Government there's a certain scripted language
5 that they use to aggravate a situation because they want that
6 colorful language and they need it and they could make
7 applications about how dangerous this person is.

8 What happens -- when this incident, according to the
9 complaint now, happened in 2004 there is no acts of violence,
10 anything that is reportable until the tape recorded
11 conversations in February of 2010 because apparently the CS
12 went to the FBI and they do a very good job in having the CS
13 follow a script and that's the way the play book goes and this
14 is sort of the end result and you get that language on the
15 telephone.

16 Judge, I'd like to point out that according to the
17 guideline calculations, if you do a calculation here, Judge,
18 now the Government uses the word use when they describe a gun.
19 The base offense level for this is a Level 20 and the statute
20 calls -- and the guideline calculations discuss a person who
21 allegedly either brandishes, displays or some -- or shows a
22 gun during the offense. If that occurs they add 3 points to
23 the given offense. So if you have a 20 plus a 3 and you still
24 subtract 3 for acceptance of responsibility you wind up with a
25 20 which is according to what I read it's 33 months is the

1 type of sentence that this would call for.

2 Now, the Government says well, it's a loaded gun,
3 it's consecutive time, he's going to get all sorts of very
4 egregious sentences when the guidelines speak otherwise.

5 Judge, if you look in the footnote in the complaint
6 and it's actually very important because in the complaint it
7 says the agents were observing this incident for approximately
8 90 minutes and the footnote says a gun was briefly displayed,
9 not that it was out the entire 90 minutes, not that this
10 person was under the threat of physical violence for a full 90
11 minutes but it says it was only briefly displayed. Judge,
12 that's on Page 8 in a footnote where the use -- the video
13 captured Malpeso holding a handgun during the February 15,
14 2010 meeting. So it sort of contradicts -- the agent's
15 affidavit sort of contradicts the Government's rendition of
16 the facts.

17 Judge, when we talk about dangerousness, Judge, the
18 Government went on to say that this defendant is an enforcer
19 for the Bonanno crime family. Well, that's interesting, Judge.
20 We have a one count indictment. It doesn't name any other
21 victims. They said this defendant has a loan shark business.
22 It doesn't name any other victim. I'm sure the FBI very
23 thoroughly investigated what the situation was. So they just
24 haphazardly throw this terminology around, the defendant is an
25 enforcer. What did he do in connection with that conduct?

1 Here's the confirmatory test. Starting in 2002 the Government
2 had prosecuted over a hundred people, made members of the
3 Bonanno crime family in this courthouse. They've had ten high
4 ranking members of the Bonanno crime family who cooperated
5 with the Government, including the boss, the underboss, third
6 in command, captains and all the way down. This defendant
7 doesn't appear anywhere on the radar in any debriefings
8 regarding any captain, underboss, associate, boss or whomever
9 about conduct he's done, and the Government knows that. So
10 historically in this courthouse Judge Garaufis has had at
11 least a hundred different Bonanno related defendants in the
12 courthouse and this defendant never appears anywhere on the
13 radar. Now we fast forward to 2010 the Government says well,
14 he's an enforcer and they have nothing at all to back that up.

15 In addition to, Judge, if you take a person and you
16 say well -- and it's easy to do. Well, this defendant is in
17 the loan sharking business. Well, you know, what's the loans,
18 what the terms, did you seize any records in his vehicle, who
19 are his victims, how long has this been going on, and they
20 have no evidence or no answers to tell this court other than
21 the fact well, he's a loan shark, he's in the business, he's
22 an enforcer. Well, okay, what do you have to back that up?
23 What do you use to substantiate that?

24 Now, they take the standard dangerousness to the
25 community. They feel this defendant is a danger. Right.

1 There's no conditions or combination of conditions which would
2 effectuate his release. Now you go to the Bail Reform Act and
3 the Bail Reform Act tells us well, there's a small
4 identifiable group of people who are involved in organized
5 crime, that that Bail Reform Act speaks and they say look,
6 these people in this -- who are in organized crime and this
7 defendant by all [inaudible] is not in organized crime. He's
8 not a member of any criminal enterprise or any criminal group.
9 Now the Government wants to say you know what, we're going to
10 lump you into that identifiable group even though this is not
11 a racketeering case. There's no actual violence. There's
12 talk of violence but there's no actual violence in this case.
13 The CS, not a hair on his head was ever touched. Maybe the
14 colorful language was alarming. However, Judge, you have to
15 look at what actually happened. The FBI was on standby I
16 guess as prevention mode to prevent anything from happening,
17 and once the person, the CS is the under protection of the
18 Government they weren't going to allow anything to happen.

19 So although the language was there if the tape is
20 accurate, and I haven't heard it, but it's interesting to say
21 well, the defendant used the gun, yet he displayed a knife.
22 She has this giant screw with some tape on it but the
23 defendant was going to hit the guy with the shovel. So it just
24 defies logic as to -- is Mr. Malpeso just a big mouth, is he
25 just a blow hard, does he just talk a lot, is he just

1 aggravated, is he upset. Maybe he's all those but the issue
2 well, is he really dangerousness and can we overcome the
3 presumption of dangerousness, and I respectfully submit we
4 can.

5 You look at the factors, Judge, and you look at the
6 defendant's background and you look at his history or lack
7 thereof and you look at his family ties and his roots in the
8 community and the fact that he will come back to court and he
9 will deal with these charges and the fact that the Government
10 is telling us there's a gun but they really don't have a gun
11 and there's no evidence that it was a real gun. It doesn't
12 fall under the statute of a firearm. It may just simply be a
13 dangerous weapon if one at all.

14 Just focusing again on the Bail Reform Act, Judge,
15 Ms. Argentieri spoke about the Circuit and how the Circuit
16 routinely issues directives and case law and remands people,
17 but those are more focused on leaders of organized crime where
18 they have this alleged network of people where there's a
19 pattern of criminal activity that continues. There's nothing
20 in this complaint that says this is a continuing ongoing
21 criminal enterprise, Judge, or that he's involved in anything
22 else except what we see in the complaint.

23 Now, Judge, I submit we are again prepared to submit
24 the marital home as bail. There's half a million dollars in
25 equity. The wife is here to sign the bond. The defendant

1 could sign a bond. I'm sure Pretrial supervision would be
2 appropriate.

3 What's important to note, Judge. There has been a
4 lot of people who are charged with a lot worse criminal
5 activity who have been released on bail and have abided by the
6 terms and conditions of the directives of the court and I'm
7 sure Your Honor has released those types of people, whether
8 they're of an Italian extraction or otherwise who have been
9 released on charges involving murder and other equally as
10 serious crimes, and those defendants have always come back to
11 court and dealt with their issues in the correct forum, Judge.

12 The Government has one potential victim, the CS
13 who's mentioned unnamed in the complaint. Is the community
14 really shaking at its core or is this one complaining witness,
15 this CS able to be taken care of by the Government where this
16 conduct will cease and desist immediately.

17 I respectfully submit, Judge, this defendant is not
18 a risk of flight. There is nothing to suggest that he is and
19 he is not a danger to the community. Language alone in my
20 opinion, although colorful, is simply not enough to detain
21 this defendant in the MDC based on his history, his
22 characteristics, his significant medical condition, and the
23 bail package we've proposed. If Your Honor would impose any
24 other conditions, if the court thinks electronic monitoring is
25 appropriate, Pretrial Services has mentioned that in the

1 report, of course we would adopt Your Honor's directives.

2 Thank you.

3 THE COURT: Anything you wanted to add, Ms.
4 Argentieri?

5 MS. ARGENTIERI: Judge, nothing that the defense
6 counsel just said rebuts in my view the Government's view
7 regarding the presumption in this case. At some point it's
8 just completely predictable, right. We have the gun on a
9 video. He says oh, that contradicts what you said because it
10 was just briefly on the video. Well, it is briefly on the
11 video but what that does is it corroborates what the
12 confidential source tells us is going on in the car. Now it's
13 like well, no one was going to get hurt because the FBI was
14 there and they were monitoring him. If we didn't have the gun
15 on the tape they'd be like there's no gun. Now the gun is on
16 the tape. So like maybe it's not a real gun. Really?
17 Produce it. Produce the fake gun that he used. I mean what
18 exactly -- [inaudible - away from microphone] but he didn't
19 use [inaudible] use it for, Judge. What was he going to use
20 them for exactly, this knife?

21 MR. ROMANO: He's a carpenter.

22 MS. ARGENTIERI: Right. A knife for carpentry?

23 THE COURT: Ms. Argentieri and Mr. --

24 MS. ARGENTIERI: With brass knuckles on it.

25 THE COURT: I'm not a jury.

1 MS. ARGENTIERI: I know, Judge.

2 THE COURT: You don't have to -- go ahead.

3 MS. ARGENTIERI: Just briefly, Judge. He says -- he
4 refers to this as an indictment. It's actually not an
5 indictment. It's a complaint. As is our practice in the
6 Eastern District of New York we don't put every single charge
7 that we're thinking of in the complaint. We start off with
8 some of the most serious charges. Here, extortion and he used
9 a gun and that is quite clear from the tape.

10 Mr. Romano asked what did he do, what did he do that
11 was so bad. Well, the Government submits that what he did was
12 so bad is he threatened someone at gunpoint and ruined a man's
13 life. He wants to hide behind the family. He's got young
14 kids. He should have thought about those young kids five
15 years ago when he -- at least the Government is aware of --
16 entered the loan sharking business.

17 I'm not exactly sure what Mr. Romano was talking
18 about when he said that Mr. Malpeso's name never come up
19 before but in my view he doesn't have access to all 3500 that
20 the Government does and the Government is proffering that
21 there are cooperating witnesses and confidential sources who
22 will say that he's an associate of the Bonanno family who's
23 looking to get straightened out and that he was in Anthony
24 Sclafani's crew and that he's a loan shark and that he's an
25 enforcer for the mob.

1 Judge, if there's any question in your mind about
2 what happened on these tapes and the FBI giving him a script,
3 I would just ask you to allow me to play portions of the tape
4 for you. You can hear exactly who this defendant is because
5 really he says it best.

6 THE COURT: I don't -- I've heard enough. You've
7 both had ample time to say what you wanted to say. I've heard
8 enough and I'm not prepared to take a chance that Mr. Malpeso
9 will not follow up on his threats. So I believe the
10 Government satisfied me by clear and convincing evidence that
11 he poses a danger to a person in the community and perhaps to
12 others but certainly to at least one person in the community
13 and that no combination of conditions can alleviate that
14 threat.

15 MR. ROMANO: Would strict house arrest with bracelet,
16 electronic monitoring?

17 THE COURT: I considered it all. I've granted the
18 Government's motion for detention and I believe they've
19 satisfied me by clear and convincing evidence that Mr. Malpeso
20 poses a danger to a specific person in the community and
21 therefore -- and no combination of conditions can alleviate
22 that danger.

23 Have you discussed with Mr. Malpeso the scheduling
24 or preliminary hearing, Mr. Romano?

25 MR. ROMANO: I haven't, Your Honor.

1 THE COURT: You have not?

2 MR. ROMANO: I have not.

3 THE COURT: If you want to discuss it now you can or
4 we can schedule it and then you can choose to waive it at a
5 future point.

6 MR. ROMANO: Sure. Let's schedule it.

7 THE COURT: It will be scheduled for two weeks from
8 today, March 17th.

9 MR. ROMANO: Judge, just as far as medical issues are
10 concerned, this defendant again --

11 THE COURT: We will note the fact that you say he
12 suffers from high blood pressure.

13 MR. ROMANO: High blood pressure.

14 THE COURT: Do you have particular medications that
15 we can advise the MDC about?

16 MR. ROMANO: He's on painkillers. He's on Oxycodone
17 for his back and his knees and those are two items --

18 THE COURT: I'll also say that he's been prescribed
19 pain medication for back and knee injuries, right?

20 MR. ROMANO: Yes.

21 THE COURT: We will make a note of that as well. Are
22 there any specific medications for the high blood pressure?

23 MR. ROMANO: Judge, when he was arrested he was taken
24 to the hospital. His blood pressure was 180/120. When he was
25 released back into custody they suggested that he see a doctor

1 within 48 hours. So if you could order that he -- his blood
2 pressure is monitored and prescribe any medication as needed
3 and --

4 [Pause in proceedings.]

5 MR. ROMANO: Judge, I would note, and just as an
6 aside, this defendant was housed in the shoe unit and we would
7 ask that the court recommend that he be put in population in
8 the dorm for the simple reason he --

9 THE COURT: I am unable to make those determinations
10 to the Bureau of Prisons. I don't know what led them to do
11 that but the Bureau of Prisons makes judgments about that --

12 MS. ARGENTIERI: Judge, actually he was just held in
13 the shoe because that's where they have people overnight. He
14 wasn't technically in the custody of the Marshals.

15 THE COURT: Well, there's your answer. If that
16 persists then you can discuss it with ms. Argentieri and then
17 if there's a basis for me to review that or for the Magistrate
18 Judges to review that determination then you -- I certainly
19 won't prevent you from making an application but at this point
20 I'm not in a position to make a recommendation.

21 MR. ROMANO: Judge, just for the record, he was in a
22 cell last night and there was apparently feces all over the
23 walls in the facility and there was feces on the mattress that
24 they put on the floor to sleep on and there was a non working
25 toilet which apparently was full to the rim with other items

1 and non usable. So it was really disgusting conditions.

2 THE COURT: All right.

3 MR. ROMANO: So if we can put the defendant in a
4 dorm.

5 THE COURT: As I said, Mr. Romano, I am not in a
6 position to recommend to the Bureau of Prisons to do anything
7 specific with Mr. Malpeso. I hope that the circumstances
8 improve. If they don't then you certainly can bring that back
9 to our attention.

10 MR. ROMANO: Thank you.

11 THE COURT: All right. Is there any other matter to
12 address today?

13 MS. ARGENTIERI: No, thank you, Judge.

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1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.



6 Shari Riemer

7 Dated: March 18, 2010

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